

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant contends she injured her left hip and left hamstring as she was transferring a patient on June 10, 1998, while employed as a CNA for respondent. Furthermore, claimant contends the accident occurred as she was assisting the charge nurse on duty, Louise Pearce, R.N., in transferring the patient from a chair to his bed.

On June 25, 1998, respondent terminated claimant for abusing patients. At that time, claimant testified she told Jeff Brown, administrator for respondent, that she was injured on June 10, 1998, while transferring a patient. Jeff Brown's sworn statement contained in an affidavit was admitted into the preliminary hearing record. Mr. Brown verified that during the time he terminated the claimant on June 25, 1998, she notified him that she had injured her upper back while transferring a patient on June 10, 1998. Mr. Brown also stated that the claimant told him she had notified her charge nurse, Louise Pearce, of the accident.

Claimant's charge nurse, Louise Pearce, also completed a sworn statement contained in an affidavit that was admitted into evidence at the preliminary hearing. Ms. Pearce stated that claimant did not tell her of a work-related injury. Ms. Pearce also denied that she had assisted claimant transferring a patient on June 10, 1998. Ms. Pearce stated she has a back condition and she does not lift patients.

Claimant did not seek medical treatment for the alleged left hip or leg injury until July 23, 1998. She saw Mark G. Bell, M.D., of the Salina Cares Health Clinic on that date. Dr. Bell recorded a history from claimant that she had intermittent soreness in her left outer leg for about a month. But claimant was not sure of any injury. His impression was left hamstring strain. The doctor recommended limited left leg activity and stretching exercises.

Thereafter, claimant did not again seek additional medical treatment for her left leg problem until November 13, 1998. At that time, she saw Kenneth D. Wedel, M.D. Claimant gave Dr. Wedel a history of lifting a patient in June 1998 while employed by the respondent. Claimant also told Dr. Wedel that one hour after the incident she felt discomfort in her left buttock. Dr. Wedel's examination revealed no abnormal physical findings. He gave claimant some samples of a non-narcotic pain medication in an effort to relieve her discomfort.

At the time of the preliminary hearing, February 2, 1999, claimant had not sought any additional medical treatment for her alleged left leg hamstring strain since Dr. Wedel saw her on November 13, 1998. Further, claimant testified she had worked performing regular CNA duties for Nightingale's Health Services from August 1998 through November 1998.

At the completion of the preliminary hearing, the Administrative Law Judge found claimant had failed to prove she suffered a work-related injury while employed by the respondent. The Administrative Law Judge cited claimant's inconsistent testimony as a reason for his decision. The Appeals Board agrees with the Administrative Law Judge.

The preliminary hearing record contains evidence that claimant, following the alleged June 10, 1998, accident, made inconsistent complaints of discomfort first in her left hip, then left buttock, and finally in her left hamstring. The preliminary hearing record contains inconsistent statements by claimant as to when she felt pain and discomfort from the accident. She testifies at one point she felt discomfort 48 hours after the accident, later she testifies it was at the time of the accident, and in the history she gave Dr. Wedel she states one hour after the accident. Claimant testified she did not notify the respondent of the accident until she told Jeff Brown at the time he terminated her for abusing patients on June 25, 1998. But Jeff Brown's affidavit stated claimant told him at that time she had notified her charge nurse, Louise Pearce, of the accident. Claimant testified that when she went to Dr. Bell for medical treatment she told Dr. Bell that she hurt her left leg while working for the respondent. But Dr. Bell's medical record on that date indicates that claimant told Dr. Bell "not sure of any injury."

Claimant testified she did not give respondent notice of her June 10, 1998, accident until she was terminated on June 25, 1998. Claimant also testified that she knew she was required by the respondent to report a work-related accident immediately. K.S.A. 44-520 requires a claimant to notify the respondent of a work related accidental injury within 10 days or to show just cause for not notifying the respondent within 10 days of the accident. The first day for computing the 10 day time period excludes the first day, includes the last day, and excludes any intervening weekends or holidays. See McIntyre v. A. L. Abercrombie, Inc., 23 Kan. App. 2d 204, 929 P.2d 1386 (1996) and Gallmeister v. Christopher Manor, Docket No. 220,767 (July 1998). Claimant's alleged accident occurred on Wednesday, June 10, 1998, and claimant testified she first provided notice to the respondent on Thursday, June 25, 1998. The 10 day period then starts the day after the accident on June 11, 1998, and if intervening weekends are excluded, June 24, 1998, is the 10th day for claimant to give notice to the respondent of the alleged accident. Therefore, since claimant testified she gave the first notice of the accident on June 25, 1998, she failed to meet the 10 day requirement.

The Appeals Board also finds, as did the Administrative Law Judge, that claimant failed to establish just cause for not giving respondent notice of the accidental injury within the 10 days as required by K.S.A. 44-520.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the February 2, 1999, preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1999.

---

BOARD MEMBER

c: Arlene F. Clayton, Salina, KS  
Ronald J. Laskowski, Topeka, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director